

HOUSE BILL 393

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, relative to theft by new home contractors or home improvement service providers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-14-154, is amended by deleting the section and substituting instead the following language:

(a) For purposes of this section, unless the context otherwise requires:

(1) "Contract for home improvement services" means a contractual agreement, written or oral, between a person performing home improvement services and a residential owner, and includes all labor, services, and materials to be furnished and performed under such agreement;

(2) "Home buyer" means a person who intends to enter into a new home construction contract on behalf of any person;

(3) "Home improvement services" means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any residential property, and includes, but is not limited to, the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, and roofing;

(4) "Home improvement services provider" means any person or entity, whether or not licensed pursuant to title 62, chapter 6, who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of home

improvement services for a fee. Home improvement services provider specifically includes, but is not limited to, a residential contractor as defined in § 62-6-102 when such contractor is performing home improvement services and a home improvement contractor as defined in § 62-6-501;

(5) "New home contractor" means any person who offers or provides new home construction services as a general contractor or a subcontractor, including, but not limited to, an architect, engineer, or real estate broker or agent;

(6) "New home construction" means the erection, installation, or construction of a dwelling on a fixed foundation on land which is owned or purchased by a home buyer;

(7) "New home construction contract" means a contractual agreement, written or oral, between a new home contractor and a home buyer whereby the new home contractor agrees to provide new home construction services in exchange for tender of money or other consideration of value by a home buyer or by any lending institution on behalf of the home buyer to a new home contractor as part of a new home construction contract;

(8) "Possession" means actual care, custody, control, or management of residential property, but shall not include occupancy of residential property through a lease or rental agreement;

(9) "Residential owner" means a person who has legal possession of residential real property, including any person authorized by such residential owner to act on the residential owner's behalf; and

(10) "Residential property" means the building structure where a person abides, lodges, resides, or establishes a living accommodation, or where a home buyer or residential owner intends to abide, lodge, reside, or establish a living accommodation following the completion of new home construction or home improvement services made pursuant to a new home construction contract or a

contract for home improvement services, and includes the land on or adjacent to such building structure.

(b) It is an offense for a new home construction contractor or home improvement services provider with intent to defraud to:

(1)

(A) Fail to refund amounts paid under a new home construction contract or a contract for home improvement services within ten (10) days of:

(i) The acceptance of a written request for a refund either hand delivered or mailed certified mail return receipt attached;

(ii) The refusal to accept the certified mail sent to the last known address of the new home contractor or home improvement services provider by the home buyer or residential owner; or

(iii) The return of the certified mail to the home buyer or residential owner indicating that the addressee is unknown at the address or a similar designation if the provider failed to provide to the homebuyer, residential owner, or the United States postal service a correct current or forwarding address;

(B) A violation of subdivision (b)(1)(A) is an offense only if:

(i) No substantial portion of the contracted work has been performed at the time of the request;

(ii) More than ninety (90) days have elapsed since the starting date of the new home construction contract or contract for home improvement services; and

(iii) A copy of the written request for a refund was sent by the home buyer or residential owner to the consumer protection division of the office of the attorney general;

(2) Deviate from or disregard plans or specifications in any material respect that are contained in a new home construction contract or contract for home improvement services. Such deviation includes, but is not limited to:

(A) The amount billed for the new home construction contract or contract for home improvement services is substantially greater than the amount quoted in the contract;

(B) The materials used in the project are of a substandard quality but the home buyer or residential owner was charged for higher quality materials; or

(C)

(i) The home buyer or residential owner did not provide written consent for the new home contractor or home improvement services provider to deviate from or disregard plans or specifications in the contract; and

(ii) Such deviation or disregard caused substantial damage to the home buyer or residential owner's property.

(c)

(1) A violation of subsection (b) is punishable as theft pursuant to § 39-14-105. Value for a violation of subsection (b), shall be determined by the monetary amount of the new home construction contract or contract for home improvement services that is paid, minus the value of any work performed, plus

the cost to repair any damage to the home buyer or residential owner's property caused by the new home contractor or home improvement services provider.

(2) If a person is convicted of a violation of subsection (b), the court may order the person to make restitution to any home buyer or residential owner that has suffered injury resulting from the crime. Vehicles used to commit this offense are subject to seizure and forfeiture under the same procedures used for forfeitures set out in chapter 11, part 7 of this title.

(3) All fines collected as a result of a violation of subsection (b) shall be allocated as follows:

(A) First to remaining unpaid court costs assessed in the case;

(B) Then to restitution ordered by the court pursuant to subdivision (c)(2); and

(C) Any remaining money shall be transmitted to the state board of licensing contractors for purposes of carrying out § 62-6-139.

(4) In addition, such a violation shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, and as such, the private right of action remedy under that act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

(d) Upon a conviction for a violation of this section, the court shall notify the state board of licensing contractors of the new home contractor or home improvement services provider's conviction. If the new home contractor or home improvement

services provider is licensed by the board, the board shall revoke the new home contractor or home improvement services provider's license pursuant to § 62-6-118.

(e) Prosecution under subsection (b) shall not bar prosecution under any other applicable criminal statute nor shall it bar the commencement of any applicable civil cause of actions, including, but not limited to, violations of the Tennessee Consumer Protection Act of 1977 or title 62, chapter 6.

(f) The district attorney general in conjunction with any law enforcement agency shall have the authority to investigate and to institute criminal proceedings for any violation of subsection (b) regardless of any actions taken or not taken by the board of licensing contractors.

SECTION 2. This act shall take effect July 1, 2017, the public welfare requiring it.